

REMARKS

After entry of this amendment, claims 1-26 and 29-39 remain pending. In the present Office Action, a restriction requirement was presented between the alleged species of Group I, claims 2-9, 11-13, 15-17, 19-26, 29-30, and 36-39, and Group II, claims 31-35. Applicants hereby elect, with traverse, Group I, claims 2-9, 11-13, 15-17, 19-26, 29-30. Accordingly, Applicants have placed claims 31-35 in withdrawn state in anticipation of either allowance of a generic claim or the granting of a petition to withdraw the restriction. Additionally, Applicants reserve the right to file a divisional application to capture the subject matter of claims 31-35. Applicants respectfully submit that claims 1-26 and 29-39 are in condition for allowance for the reasons indicated in the Response to Office Action filed June 3, 2009.

Applicants respectfully submit that the restriction requirement is improper because the alleged species set forth in the Office Action are not disclosed as actual species in the present application. The definitions of the species and claim groupings provided in the Office Action do not define mutually exclusive species of a common genus. As noted in M.P.E.P. § 806.04(e): “*Claims are never species.*” Instead, a species is an embodiment of the invention disclosed in the specification and should be defined by referring to the specification, not the claims. Species must have mutually exclusive characteristics. *See* M.P.E.P. § 806.04(f). According to M.P.E.P. § 806.04(f):

Where two or more species are claimed, a requirement for restriction to a single species may be proper if the species are mutually exclusive. Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope. (emphasis added).

Note that “mutually exclusive” is a requirement of the species as described in the disclosure. For species to be mutually exclusive, both species must be part of the same genus and **each species must include a feature that cannot exist in any other species of that same genus**, i.e., the definition of each species must exclude all the other species of that genus (the species must be “mutually exclusive”).

Simply including a different limitation does not make a claim specific to any particular species. Instead, the requirement that species be mutually exclusive means that a claim drawn to one species must require a feature that cannot exist in the other species. The definitions and claim groupings provided in the Office Action are clearly not mutually exclusive. That is, the specification does not describe executing virtual machine corresponding to a user (group I) and access control of a filesystem (group II) as mutually exclusive species. Applicant's specification describes embodiments that may include all the features of both claim 11 and claim 31, for example. See, e.g., Fig. 4 of the specification and its description at page 17, line 26 to page 19, line 10. Thus, by definition, these claims cannot be said to be drawn to mutually exclusive species.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-20000/LJM.

Respectfully submitted,

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